MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force

FROM: Matthew McKinney, Executive Director
Gerald Mueller, Project Coordinator
Mark Lambert, Project Associate

SUBJECT: Summary of October 28, 2002 Meeting

DATE: November 22, 2005

Participants

All members of the Task Force and staff were present, except the following:
Land Lindberg, representing Blackfoot River Watershed
Bill Kleinhans, representing Flathead Basin above Flathead Lake
Matt Clifford, representing Conservation and Environment
Phil Tourangeau, representing the Confederated Salish and Kootenai Tribes
Bill Slack, representing Flathead River Watershed below Flathead Lake to the confluence with the Clark Fork River

Meeting Goals

Introductions to:
- Water commissioners
- Basin water rights
- Basin hydropower dam operations

Discussion of state water rights adjudication
Work plan

Discussion of Issue Briefs and Meeting Summaries

The Task Force voiced concerns about the meeting summaries that are distributed after each meeting. Some members requested more detailed coverage of the presentations given at each meeting. Members agreed that the water management plan should contain a summary of Montana water law and the status of the water rights adjudication in the basin. An issue brief on water rights will be prepared. (Please note that Montana water rights are covered extensively in the DNRC publication "Water Rights in Montana," which was supplied to Task Force members and is available online at: http://www.dnrc.state.mt.us/wrd/WTR-1.pdf.)

The issue brief for the August meeting on basin hydrology and the physical availability of water is currently being drafted. An outline has been provided to the Task Force members.

Presentations

1. Mike Roberts, DNRC Hydrologist and water commissioner trainer - Water Commissioners: what they do and how they are appointed

Water rights commissioners are agents of Montana's District Courts and are appointed by a District Court Judge, usually at the request of a petition signed by at least 15% of the basin's water users. To obtain a water commissioner, the basin must be subject to an enforceable water rights decree such as a temporary preliminary decree. The water commissioner allocates water

based on the priorities in the decree. The cost of the water commissioner is born by the water rights holders on a pro rated basis according to the amount of the individual's water rights. The commissioner is typically a resident of the basin in question, and the District Court Judge usually appoints the person recommended by the petitioners.

A copy of Mr. Roberts' power point presentation will be handed out at the next meeting.

2. Montana Chief Water Judge Loble - The status of Montana's water rights adjudication
Judge Loble traced the history which led up to passage of Senate Bill 76 in 1979, the act which authorized the statewide adjudication of Montana water rights. Previous attempts at initiating an adjudication included a 1939 act which called for an adjudication as soon as possible. These were generally stymied because of concern about bureaucracy depriving water rights holders of their property. However, by the early 1970's Montana was faced with potential heavy water demand from pending coal development and lawsuits filed by the US government on behalf of Indian tribes. The legislature finally decided that not knowing who owned what water was not acceptable, and Senate Bill 76 was passed.

The 1979 statute required that claims for all pre-July 1, 1973 water rights had to be filed with the Water Court by April 30, 1982. Some 211,000-215,000 claims were filed on time and another 5,000 were filed late. In 1993, to resolve the late claims issue, the legislature set a new filing deadline of July 1, 1996. If a claim was not filed by that date, the water right was forfeited. Rights for which claims were filed between April 30, 1982 and May 7, 1982 were subordinated to tribal and federal water rights. Rights filed between May 7, 1982 and July 1, 1996 were subordinated to all timely filed rights. A total of 219 thousand rights in 85 basins of pre-July 1, 1973 rights were filed before the deadline.

The steps in the adjudication process for a given basin, are as follows. First the DNRC examines each statement of claim and notes any problems. The Water Court then combines all of the claims plus DNRC's verification comments into a temporary preliminary decree. It then provides notice to all basin water rights holders of the decree, and specifies a period in which the water rights holders can file objections against any of the claims. After the objection period ends, one of the Water Court's six water masters works with the claimants to resolve the objections. If all objections are not resolved, the Water Court issues a notice of a hearing, conducts the hearing, and rules on the validity of each contested water right. The next step is to combine the resultant rights with federal and tribal rights and offer another objection period. After the objections are filed, the Water Court through its water masters again seeks to resolve the objections directly with the parties or through a hearing. Once all of the objections are resolved, a final decree is issued and the adjudication is complete. The Water Court has issued 54 decrees in 51 basins to date.

The water right filings for the Clark Fork basin make up twenty-seven volumes. A list of the Clark Fork sub-basins and their adjudication status follows. DNRC will supply Task Force members with a map showing the adjudication status of the Clark Fork sub-basins.

Basin Code	Description	Status
76G	Upper Clark Fork	TPD
76F	Blackfoot	No Decree

Basin Code	Description	Status
76GJ	Flint Creek	TPD
76 E	Rock Creek	TPD
76M	Lower Clark Fork River to Paradise	TPD
76HD	Bitterroot Upper Eastside	No Decree
76HC	Bitterroot Eastside Middle	No Decree
76HA	Bitterroot River Corridor	No Decree
76HB	Lower Bitterroot River	TPD
76I	Middle Fork of the Flathead River	TPD
76J	South Fork of the Flathead River	TPD
76K	Swan	TPD
76L	Lower Flathead	No Decree
76LJ	Flathead Lake	No Decree
76N	Clark Fork River below the confluence with the Flathead	No Decree

Note: In the table, TPD stands for Temporary Preliminary Decree.

Because all of the basin's tribal and federal water rights have not been resolved, no preliminary or final decrees have been issued in the Clark Fork River basin.

The fiscal note that accompanied SB 76 indicated that 100 FTE's would be necessary to conduct the adjudication. However, the Montana Water Court now has only six water masters and three administrative support positions in addition to Judge Loble. The DNRC has only 11.5 FTEs assigned to assisting the Water Court deliberations.

In response to a question, Judge Loble summarized the recent Montana Supreme Court Bean Lake ruling. In the 1988 Bean Lake case, the Supreme ruled that, except for DFWP Murphy rights established pursuant to legislation, water rights could not be issued for recreation and fish and wildlife. In the recent Bean Lake case, the Supreme Court reversed its previous ruling and held that pre-1973 water rights may exist for recreation and fish and wildlife and that no diversion is required for such rights. The Water Court will now have to examine all pre-1973 water rights claims for recreation and fish and wildlife and decide which if any are valid. According to DNRC, 13,415 o fsuch claims were filed, but only a small number of these involved instream flow claims.

3. Mike McLane, Planner with the DRNC Water Management Bureau
Water rights of record by water use category for the basin and its subbasins

Mr. McLane used a power point presentation to summarize water rights claims in the Clark Fork basin by use category. A copy of his presentation was provided to Task Force members at the meeting.

Basin Hydro Power Generation

4. Ralph Carter, Facility Manager of Hungry Horse Dam, Bureau of Reclamation
Capability and operation of the Hungry Horse Dam

Hungry Horse Dam was completed and fully operational in 1953. The generating capacity is 428 megawatts. Each year 2.7-2.8 million-acre feet of water pass through the dam. From 1987 through 1996, Hungry Horse generated on average 900 million kilowatt hours. For internal purposes only, the Bureau values Hungry Horse power at $25 per megawatt hour.

Hungry Horse Dam is operated to provide power generation and flood control. Operation is constrained by a bull trout and Columbia River salmon biological opinions under the Endangered Species Act (ESA) and a voluntary agreement with the State of Montana regarding Flathead River instream flow. Operations must maintain a 400-900 cubic feet per second (cfs) minimum flow below the dam and 3,500 cfs in the main stem of the river. During a drought year, pursuant to the voluntary agreement with the state, the Bureau can reduce the 3,500 cfs on the main stem to 3,200 cfs. Since the 1995 ESA biological opinion for Columbia River salmon, the top 25 feet of reservoir storage is available for salmon flows. All constraints are combined in integrated rule curves that are used to govern operation.

See http://www.usbr.gov/power/data/sites/hungryho/hungryho.htm for more information on Hungry Horse Dam.

A copy of Mr. Carters overheads will be supplied to each Task Force member at the next meeting.

5. Lance Elias, Resource Coordinator, PPL Montana
Capability and operation of Kerr and Thompson Falls Dams

Kerr Dam - Kerr Dam was completed in 1938,and now has a generating capacity of 189 megawatts. Flathead Lake behind the dam stores 1.2 million acre feet. From 1993-97 the average generation was 11,063 gigawatt hours. The maximum discharge rate at the dam at full pool is 55 thousand cfs. The dam's FERC license dictates operational constraints. The license allows only a ten foot draft of Flathead Lake. Beginning July 1 of each year and continuing through September, the Lake must be maintained at or near full pool, 2,893 feet elevation. The Lake can be drafted to its maximum ten feet through the winter. Refill begins in the spring, and the Lake should reach 2,890 feet by Memorial Day. The reservoir should be back at full pool when the US Army Corps of Engineers decides that no threat of flooding has passed or by June 15. Pursuant to the FERC license, minimum discharge from the dam cannot drop below 3200 cfs from July1 to April 15. Beginning on April 16, discharge can increase to 12,700 cfs in mid-May to June. The FERC license provides for joint ownership of the dam between PPL Montana and the Salish and Kootenai Tribes, with PPL owning the dam for the first 30 years, and the Tribes in the last 20 years.

Thompson Falls Dam - Thompson Falls Dam was completed in 1915, and now has a generating capacity of 86 megawatts. Average annual generation is 542,000 megawatt hours. The maximum hydraulic capacity is 23,100 cfs. The dam is operated as a run-of-the-river project (i.e. it has no storage capability), and the reservoir behind the dam is always kept within 3 or 4 inches of full.

Pursuant to its FERC license, minimum discharge from the dam is at least 6,000 cfs. The dam's hydraulic capacity is 23,100 cfs.

6. Steve Fry, Avista Corporation - Capability and operation of Cabinet Gorge and Noxon Rapids Dam

Steve Fry provided background and described the operation of the Cabinet Gorge and Noxon Rapids Dams using a power point presentation, copies of which will be provided to Task Force members at the November 25 meeting.

Work Plan

Task Force members identified the following as key questions for the water management plan to address:

- In the future, does the plan provide for increased water consumption or sharing of existing supplies?
- How is water administered in the basin, and what are the rules by which it is administered?
- How is water in the basin used?

A member requested that the Task Force hear a presentation about the watershed planning efforts in the basin funded by the Bonneville Power Administration.

Next Steps

The November 25 meeting will focus on the following topics:

- How much water is used?
- By whom?
- For what?

The December meeting will be postponed to January 6, 2003.

Accompanying Documents

The following documents are enclosed with this memorandum:

- November 25 Meeting Agenda
- Draft outline of the basin water management plan